

WMN:JDL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

M-10-211

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UNITED STATES OF AMERICA

TO BE FILED UNDER SEAL

- against -

COMPLAINT AND AFFIDAVIT
IN SUPPORT OF
APPLICATION FOR ARREST
AND SEARCH WARRANT

MICHAEL HOSNY GABRIEL,

Defendant.

(21 U.S.C. § 846)

- and -

IN THE MATTER OF THE APPLICATION
OF THE UNITED STATES OF AMERICA
FOR A SEARCH WARRANT FOR THE
PREMISES KNOWN AND DESCRIBED AS:

1. 523 FIFTH STREET, APARTMENT 2R,
BROOKLYN, NEW YORK 11215, and

2. A 2000 AUDI A-6, WITH VIN
NUMBER WAUZL54B1YN001239 AND OHIO
LICENSE PLATE NUMBER EQ84SJ, AND
ITS CONTENTS, INCLUDING ANY CLOSED
OR LOCKED CONTAINERS THEREIN.

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EASTERN DISTRICT OF NEW YORK, SS:

LESLIE A. CASON, being duly sworn, deposes and states
that she is a Diversion Investigator with the Drug Enforcement
Administration ("DEA"), duly appointed according to law and
acting as such.

Upon information and belief, on or about and between
May 28, 2008 and December 21, 2009, both dates being approximate
and inclusive, within the Eastern District of New York and
elsewhere, the defendant MICHAEL HOSNY GABRIEL, together with

others, did knowingly and intentionally conspire to distribute and possess with intent to distribute a controlled substance, which offense involved a substance containing Adderall, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

(Title 21, United States Code, Section 846).

Also upon information and belief, there is probable cause to believe that within the premises known and described as: (1) 523 FIFTH STREET, APARTMENT 2R, BROOKLYN, NEW YORK 11215 (the "SUBJECT APARTMENT"), and (2) A 2000 AUDI A-6, WITH VIN NUMBER WAUZL54B1YN001239 AND OHIO LICENSE PLATE NUMBER EQ84SJ, AND ITS CONTENTS, INCLUDING ANY CLOSED OR LOCKED CONTAINERS THEREIN (the "SUBJECT VEHICLE"), there are: (a) controlled substances, including Adderall, and residue of those substances; (b) currency, bank statements, credit card statements, and safety deposit box keys; (c) controlled substances paraphernalia, including implements used to manufacture, prepare, use and store controlled substances; (d) controlled substances packaging material; (e) records of controlled substances transactions; (f) prescription pads, labels, and receipts; and (g) a handgun and ammunition, all of which constitute evidence, fruits, and instrumentalities of violations of the controlled substances laws of the United States.

The source of your deponent's information and the grounds for her belief are as follows:^{1/}

1. I have been a Diversion Investigator with the DEA for approximately five years. My primary responsibility is to investigate the diversion of legally manufactured controlled substances into the illicit market. I have had experience investigating cases in which Schedules II through V controlled substances have been purchased from complicit doctors and sold to abusers of those substances.

2. My information in this case comes from my direct participation in the investigation, a review of DEA and prescription records, discussions with other DEA agents, and discussions with an Anonymous Tipster (the "AT") and Confidential Source (the "CS"), both of whose information has proven to be reliable in the past and has been corroborated by independent evidence.

The Adderall Diversion Conspiracy

3. In or about October 2009, the AT contacted DEA agents and stated, in sum and substance, that the defendant MICHAEL HOSNY GABRIEL, who is an anaesthesiology resident at a hospital in Brooklyn, New York (the "hospital"), was writing

^{1/} Because the purpose of this Complaint is to state only probable cause to arrest and to secure a search warrant, I have not described all the relevant facts and circumstances of which I am aware.

prescriptions for Adderall and having them filled by co-conspirators. The AT also stated, in sum and substance, that the co-conspirators would then turn over the Adderall pills to the defendant, who would sell them to third parties. Adderall is a Schedule II controlled substance.

4. DEA agents have had numerous contacts with the AT by e-mail and telephone. The AT has further advised, in sum and substance, that the defendant MICHAEL HOSNY GABRIEL keeps the cash proceeds of his distribution of Adderall in his home and in safety deposit boxes.

5. Since then, investigation by DEA agents has confirmed that the defendant MICHAEL HOSNY GABRIEL, who is an anaesthesiology resident at a hospital in Brooklyn, New York (the "hospital"), is a member of an organization that trafficks in prescription controlled substances, namely Adderall.

6. The investigation has revealed that the defendant MICHAEL HOSNY GABRIEL, together with other residents at the hospital, writes prescriptions for Adderall with other members of the conspiracy listed as the patients on the prescriptions. As discussed below, the purported patients do not use the prescribed medications, but instead divert them for distribution to third parties. A review of prescription records shows that, between May 28, 2008 and December 21, 2009, the members of the conspiracy filled prescriptions for over 10,000 Adderall pills.

7. Between May 28, 2008 and December 21, 2009, the defendant MICHAEL HOSNY GABRIEL himself wrote prescriptions for over 8,000 Adderall pills. Notably, based on my discussions with senior physicians in the anaesthesiology department at the hospital, the defendant would not have a legitimate reason to write prescriptions for Adderall, which is a stimulant.

8. During the course of the investigation, DEA agents identified an individual who subsequently became a CS. The CS is employed as an anaesthesiology resident at the hospital.

9. The CS has informed me that, on multiple occasions, he/she allowed the defendant MICHAEL HOSNY GABRIEL to list him/her as the patient on prescriptions for Adderall. These prescriptions were written on prescription pads in the name of the defendant and of other co-conspirators. The CS would then get the prescriptions filled at a pharmacy and turn them over to the defendant for distribution. I have reviewed prescription records, which confirm the existence of such prescriptions.

10. The CS has also informed me that the defendant MICHAEL HOSNY GABRIEL makes expenditures that would seem to be beyond the means of an anaesthesiology resident. The CS has observed the defendant bring large amounts of cash to Atlantic City, New Jersey on gambling trips.

The SUBJECT APARTMENT

11. The CS has been inside the SUBJECT APARTMENT, where the defendant MICHAEL HOSNY GABRIEL resides. The SUBJECT APARTMENT is a second-floor apartment in a brownstone building. The numbers "523" are prominently displayed above the front door of the building. The SUBJECT APARTMENT is the first apartment to the right on the second floor. The front door of the apartment is made of metal painted brown, and has a peephole. The door to the other apartment on the second floor does not have a peephole.

12. The CS has been inside the SUBJECT APARTMENT on multiple occasions. On one of those occasions in February 2010, the CS entered the bedroom of the defendant MICHAEL HOSNY GABRIEL within the SUBJECT APARTMENT. In the defendant's bedroom, the CS observed, among other things, a handgun, a box of ammunition, several hundred dollars in cash, pill bottles with the prescription labels torn off, at least one label for an Adderall prescription that appeared to have been torn off a pill bottle, a pill bottle for generic Adderall listing the defendant as the patient and a co-conspirator as the prescribing physician, a Federal Express mailing label for a package shipped to the defendant from what appears to be a pharmaceutical provider in Costa Rica, and credit card statements.

13. The CS has informed me that the defendant MICHAEL HOSNY GABRIEL is presently out of town on vacation.

The SUBJECT VEHICLE

14. A search of public records has revealed that the SUBJECT VEHICLE is registered in the name of the defendant MICHAEL HOSNY GABRIEL in the state of Ohio. The CS has confirmed that the SUBJECT VEHICLE belongs to the defendant, and in fact the CS has been inside of the SUBJECT VEHICLE. The CS stated, in sum and substance, that during those prior occasions, which occurred as recently as February 2010, the CS has seen a receipt for a prescription for generic Adderall listing the defendant MICHAEL HOSNY GABRIEL as the prescribing physician and a co-conspirator as the patient.

15. The CS has confirmed that, as of the evening of March 2, 2010, the SUBJECT VEHICLE was parked in a parking lot at the hospital in Brooklyn, New York.

16. Based on my training and experience, I submit that there is probable cause to believe that the SUBJECT APARTMENT and the SUBJECT VEHICLE contain (a) controlled substances, including Adderall, and residue of those substances; (b) currency, bank statements, credit card statements, and safety deposit box keys; (c) controlled substances paraphernalia, including implements used to manufacture, prepare, use and store controlled substances; (d) controlled substances packaging material; (e) records of controlled substances transactions; (f) prescription pads, labels, and receipts; and (g) a handgun and ammunition, all

of which constitute evidence, fruits, and instrumentalities of violations of the controlled substances laws of the United States.

WHEREFORE, your deponent respectfully requests that the defendant MICHAEL HOSNY GABRIEL be dealt with according to law.

WHEREFORE, your deponent respectfully requests that a warrant be issued authorizing a search of the SUBJECT APARTMENT and the SUBJECT VEHICLE, including any closed or locked containers therein, and authorizing seizure of the items described in Rider A hereto, all of which constitute evidence, fruits, and instrumentalities of violations of the controlled substances laws of the United States.



LESLIE A. CASON
Diversion Investigator
Drug Enforcement
Administration

Sworn to before me this
3rd day of March, 2010


UNITED
EASTER

S/Pohorelsky

UDGE
RK

RIDER A

PROPERTY TO BE SEIZED FROM (1) THE PREMISED KNOWN AND DESCRIBED AS 523 FIFTH STREET, APARTMENT 2R, BROOKLYN, NEW YORK 11215, AND (2) A 2000 AUDI A-6, WITH VIN NUMBER WAUZL54B1YN001239 AND OHIO LICENSE PLATE NUMBER EQ84SJ, AND ITS CONTENTS, INCLUDING ANY CLOSED OR LOCKED CONTAINERS THEREIN:

1. Controlled substances, including Adderall, and residue of those substances;
2. Currency, bank statements, credit card statements, and safety deposit box keys;
3. Controlled substances paraphernalia, including implements used to manufacture, prepare, use and store controlled substances;
4. Controlled substances packaging material;
5. Records of controlled substances transactions;
6. Prescription pads, labels, and receipts; and
7. A handgun and ammunition, all of which constitute evidence, fruits, and instrumentalities of violations of the controlled substances laws of the United States.